

2563
No. 12115

United States
Court of Appeals

for the Ninth Circuit

INDUSTRIAL INDEMNITY EXCHANGE and
GENERAL ENGINEERING AND DRY-
DOCK CORPORATION,

Appellants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner for the Thirteenth Compensation District
of the Bureau of Employees' Compensation,
Federal Security Agency, and HENRY MA-
NEKE and MOLLIE MANEKE, Parents of
Adrien Maneke, Deceased,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Complainants and Appellants:

LEONARD, HANNA & BROPHY,
DONALD R. BROPHY, ESQ.,
IVAN A. SCHWAB, ESQ.,
465 California St.,
San Francisco 4, California.

For Respondent and Appellee,
Warren H. Pillsbury, Deputy Commissioner:

FRANK H. HENNESSY, ESQ.,
United States Attorney,
422 Post Office Building,
San Francisco 1, Calif.

In the District Court of the United States in and for the Northern District of California, Southern Division.

No. 27965-R

INDUSTRIAL INDEMNITY EXCHANGE, and
GENERAL ENGINEERING AND DRY-
DOCK CORPORATION,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and HENRY MANEKE and MOLLIE MANEKE, Parents of ADRIAN MANEKE, Deceased,

Respondents.

COMPLAINT FOR INJUNCTION

Complainants complain of Respondents above named and allege as follows:

I.

That complainant General Engineering and Dry Dock Corporation is, and was at all times mentioned herein, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and authorized to do business in the State of California.

II.

That the complainant Industrial Indemnity Exchange is, and was at all times herein mentioned,

an inter-insurance exchange, organized and existing under and by virtue of the laws of the State of California, and authorized to conduct a workmen's compensation insurance business in the State of California. [1 *]

III.

That the respondent Warren H. Pillsbury is, and was at all times herein mentioned, the Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and that said Thirteenth Compensation District includes the State of California; that as said Deputy Commissioner, the said Warren H. Pillsbury administers the provisions of that certain Act of Congress known as the "Longshoremen's and Harbor Workers' Compensation Act" (44 Stat. 1424, as amended 33 U. S. Code 901 et seq).

IV.

That the respondents Henry Maneke and Mollie Maneke are the persons in whose favor an Award of Death Benefit was made, as hereinafter related, and they are beneficially interested in this proceeding and for that reason are made parties respondent.

V.

That on the 26th day of June, 1947, Adrian Maneke was in the employ of General Engineering and Dry Dock Corporation at Alameda, California, as a painter and engaged in ship servicing opera-

* Page numbering appearing at foot of page of original certified Transcript of Record.

tions on a completed vessel on navigable waters of the United States; that said Adrian Maneke then and there sustained injury arising out of and in the course of his employment, resulting in immediate death, when he was thrown from a painters' float by a sudden movement of the propellor of the ship and was drowned.

VI.

That on the 26th day of June, 1947, the Industrial Indemnity Exchange, under and by virtue of a contract with the General Engineering and Dry Dock Corporation, insured said employer against the liability imposed upon it by the Longshoremen's and Harbor Workers' Compensation Act.

VII.

That said Henry Maneke and Mollie Maneke, the parents of the said Adrian Maneke, filed claims with the respondent Warren H. [2] Pillsbury, as Deputy Commissioner, against the complainants above named, for the purpose of recovering benefits under the Longshoremen's and Harbor Workers' Compensation Act by reason of the death of their son, Adrian Maneke; that the matter came on regularly for hearing before said Deputy Commissioner, and thereafter, by transfer pursuant to Section 19(g) of said Act, a hearing was held before Leonard C. Brown, Deputy Commissioner for the Tenth Compensation District; that the issues were joined and evidence, both oral and documentary, was received and the matter submitted for decision by said respondent Warren H. Pillsbury.

VIII.

That thereafter, on the 19th day of February, 1948, the respondent Warren H. Pillsbury, as Deputy Commissioner, filed in his office and served upon the parties to said proceeding a Compensation Order—Award of Death Benefit; that a copy of said Compensation Order—Award of Death Benefit is attached hereto as Exhibit A and made a part hereof.

IX.

That no proceedings for the suspension or setting aside of said Compensation Order — Award of Death Benefit filed February 19, 1948, have ever been instituted as provided in sub-division (b) of Section 21 of said Act, or elsewhere, or at all. That under the provisions of said Act the said compensation order became effective when filed on February 19, 1948, and except for these proceedings to suspend or set aside said order would become final at the expiration of thirty days after said February 19, 1948.

X.

That said Compensation Order—Award of Death Benefit is not in accord with law in finding the respondents Henry Maneke and Mollie Maneke to be legally dependent upon the deceased employee on June 26, 1947, and entitled to a death benefit at the rate of \$9.38 a week payable to claimant Henry Maneke, and \$9.38 a week payable to Mollie Maneke, beginning with July 26, 1947, and continuing until the further [3] order of the Deputy Commis-

sioner, when the evidence shows without contradiction:

(a) That said Henry Maneke and Mollie Maneke had received no contributions for support from the deceased employee for five months prior to his fatal injury on June 26, 1947.

(b) That at all times since February, 1947, to the date of hearing on October 21, 1947, said Henry Maneke and Mollie Maneke have not been dependent for support upon any source outside of their own income.

XI.

That the complainants have no adequate nor any remedy other than these proceedings which are brought pursuant to the provisions of Section 21 of the Longshoremen's and Harbor Workers' Compensation Act, which provides that if not in accordance with law a compensation order may be suspended or set aside in whole or in part through injunction proceedings brought by any party in the interest against the Deputy Commissioner making the order.

XII.

That all of said proceedings before said Deputy Commissioner are contained in a file of said Deputy Commissioner under Claim No. 2906, Case No. 181-1780, together with the testimony of witnesses heard by the said Deputy Commissioner Leonard C. Brown at the hearing held before him.

That said Deputy Commissioner Warren H. Pillsbury should be required to file with the clerk

of this court, at a time to be fixed by the court, a certified copy of all proceedings had in the case, together with all exhibits, transcripts of testimony, letters and documents of every nature and description received by said Deputy Commissioner in connection with said claim.

Wherefore, complainants pray that process in due form of law according to the course of this Honorable Court may issue and that [4] respondents may be cited to appear and answer all and singularly the matters hereinbefore set forth and that the order of said Deputy Commissioner filed February 19, 1948, be set aside and declared a nullity and that a mandatory injunction be issued herein setting aside and restraining enforcement of said purported Order dated February 19, 1948, and that the respondents be permanently enjoined from making or attempting to make any further orders with respect to said proceedings; and for such other, further and different relief as to the court may seem justified, and for costs incurred herein.

Dated March 19, 1948.

LEONARD, HANNA and BROPHY;
IVAN A. SCHWAB,

Attorneys for Complainants. [5]

EXHIBIT A

Federal Security Agency
Bureau of Employees Compensation
13th Compensation District

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

Henry Maneke and Mollie Maneke, Parents of Adrian Maneke, deceased, against General Engineering and Dry Dock Corp., Employer. Industrial Indemnity Exchange, Insurance Carrier.

COMPENSATION ORDER
AWARD OF DEATH BENEFIT

Case No. 181-1780—Claim No. 2906

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT.

That on the 26th day of June, 1947, Adrian Maneke, son of the claimants above mentioned, was in the employ of the employer above named at Alameda, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Industrial Indemnity Exchange; that on said day the said employee while performing services for the employer as a painter and engaged in

ship servicing operations on a completed vessel on navigable waters of the United States at said harbor, sustained personal injury occurring in the course of and arising out of his employment and resulting in his immediate death as follows: While on a painting float at the after end of the ship he was thrown by a sudden movement of a wheel into the water and was drowned; that the average weekly wages of the claimant herein at the time of his [6] injury amounted to the sum of \$61.60; that claimants herein, Henry Maneke, born February 26th, 1891 and Mollie Maneke, born March 10th, 1894, are the father and mother of the said employee and were dependent upon him to a substantial extent for support at the time of his death; that they are entitled to a death benefit at the rate of 25 per cent of the statutory average weekly wages of the employee, amounting to \$9.38 a week each beginning with June 26th, 1944 during their dependency or until the further order of the Deputy Commissioner.

Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD

That the employer, General Engineering and Dry Dock Corporation, and the insurance carrier, Industrial Indemnity Exchange, shall pay to the claimant compensation as follows:

To the claimant Henry Maneke the sum of \$9.38 a week payable in installments each two weeks or monthly at his election beginning with June 26th,

1947 until the further order of the Deputy Commissioner.

To claimant Mollie Maneke the sum of \$9.38 a week payable in installments each two weeks or monthly at her election beginning with June 26th, 1947 until the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 19th day of February, 1948.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner.

[Endorsed]: Filed March 19, 1948.

[7]

[Title of District Court and Cause.]

MOTION OF RESPONDENT WARREN H.
PILLSBURY, DEPUTY COMMISSIONER,
TO DISMISS COMPLAINT.

Comes now the defendant, Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees Compensation, Federal Security Agency, by his Attorney, Frank J. Hennessy, United States Attorney for the Northern District of California, and moves this Honorable Court to dismiss the Complaint herein after review of the compensation order filed herein for the following reasons.

1. That the Complaint filed herein does not state a cause of action and does not entitle plaintiffs or either of them to any relief, nor does said Complaint state a claim against the defendant War-

ren H. Pillsbury, Deputy Commissioner, upon which relief can be granted.

2. That it appears from the Complaint, including the transcripts of testimony taken before the Deputy Commissioner on file herein, that the findings of fact made by the Deputy Commissioner in the compensation order filed by him on February 19, 1948 complained of in the Bill of Complaint, were supported by evidence and under the law said findings of fact should be regarded as final and conclusive.

3. That it appears from the Complaint, including said transcripts of testimony, that said compensation order complained of is in all respects in accordance with law.

4. For such other good and sufficient reasons as may be shown. [8]

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ DANIEL C. DEASY,
Assistant U. S. Attorney.

Attorneys for Respondent Warren H. Pillsbury,
Deputy Commissioner.

[Endorsed]: Filed May 14, 1948.

[9]

[Title of District Court and Cause.]

ORDER DISMISSING COMPLAINT

It is Ordered that the Respondent's motion to dismiss the complaint for injunction herein filed be

and the same hereby is granted and said complaint is hereby dismissed.

Dated July 6th, 1948.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed July 6, 1948. [10]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that General Engineering and Drydock Corporation, and Industrial Indemnity Exchange, an inter-insurance exchange, complainants in the above entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that order dismissing complainants' complaint for injunteion and from that order granting the respondents motion to dismiss the complaint for injunction issued in favor of the respondents against complainants, and from the whole of said judgment and each and every part thereof on questions of law and the dismissal of said complaint entered herein on the Sixth day of July, 1948 and filed herein on the Sixth day of July, 1948.

DONALD R. BROPHY,
Attorney for Complainants.

Dated at San Francisco this 5th day of August, 1948. [11]

(Acknowledgment of Service.)

[Endorsed]: Filed August 5, 1948. [12]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents, that United Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of Washington, and duly authorized and qualified to do business within the State of California, for the purpose of making, guaranteeing or becoming surety upon bonds or undertakings required or authorized by the laws of the United States of America or of the State of California, is held and firmly bound unto Warren H. Pillsbury, as Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation for the 13th Compensation District, and unto his successors in office, and unto Henry Maneke and Mollie Maneke, in the penal sum of Two Hundred and Fifty Dollars (\$250.00) for the payment of which, [13] well and truly to be made unto the said respondents or their successors and personal representatives respectively, and said United Pacific Insurance Company hereby binds itself, its successors and assigns firmly by these presents.

The condition of the foregoing obligation and undertaking is such, that whereas the above-named complainants, General Engineering and Drydock Corporation and Industrial Indemnity Exchange, in the above-entitled suit have appealed and are about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the denial of motion and order made and entered

in the above-entitled court and cause upon July 6, 1948;

Now, therefore, if the said General Engineering and Drydock Corporation and the Industrial Indemnity Exchange shall prosecute their said appeal to effect and answer all costs which may be awarded or adjudged against them or either of them if they fail to make good their said appeal, then this obligation shall become void; otherwise to remain in full force and effect, and in case of any breach of said condition, it is expressly agreed that the said District Court may, upon notice to this obligor, of not less than ten days, proceed summarily in the above-entitled suit to ascertain the amount which it is bound to pay on account of such breach, and render judgment against this obligor therefor and award execution thereon.

In Witness Whereof, these presents have been executed by the attorney in fact of said obligor thereunto duly authorized and the seal of said obligor affixed, upon the day and year hereinabove written.

The premium charged for this bond is \$10.00 per annum.

(Seal)

UNITED PACIFIC

INSURANCE COMPANY,

By /s/ M. HENDERSON,

Attorney in Fact.

[14]

State of California,
City and County of San Francisco—ss.

On this 5th day of August, 1948, before me, Alfred D. Martin, a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared M. Henderson known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of United Pacific Insurance Company and acknowledged to me that she subscribed the name of United Pacific Insurance Company thereto as principal, and her own name as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said City and County of San Francisco the day and year in this certificate first above written.

/s/ ALFRED D. MARTIN,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires May 16, 1949.

Examined and recommended for approval as
provided in Rule 8.

/s/ D. R. BROPHY,

Attorney for Complainants.

I hereby approve the foregoing bond.

Dated this 5th day of August, 1948.

MICHAEL J. ROCHE,

United States District Judge for the Northern
District, Southern Division.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Complainants hereby designate that the whole of the record, proceedings, and evidence be contained in the record on appeal herein and specifically request this Court to require the respondent, Warren H. Pillsbury, to certify as part of the record the sworn interrogatories of Conn Winfrey, covering in particular the actual bank records of the First National Bank of Lebanon, Missouri, showing the deposits and balances of Henry Maneke and Molly Maneke between the dates November 14, 1946 and December 9, 1947, which records were produced and available to Deputy Commissioner Leonard C. Brown, who presided at the hearing at Lebanon, Missouri on October 21, 1947 but which were not included in the transcript of testimony of the proceeding held that date [16] before said Deputy Commissioner.

D. R. BROPHY,

Attorney for Complainants.

Dated at San Francisco this 5th day of August, 1948.

[Endorsed]: Filed August 5, 1948.

[17]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellants herein may have to

and including October 24, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated September 14, 1948.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Sept. 14, 1948. [18]

District Court of the United States,
Northern District of California.

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 18 pages, numbered from 1 to 18, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Industrial Indemnity Exchange, et al. vs. Warren H. Pillsbury, Deputy Commissioner, etc., et al, No. 27965-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Three Dollars and Ninety Cents (\$3.90) and that the said amount has been paid to me by the Attorneys for the appellants herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at

San Francisco, California, this 26th day of November, A. D. 1948.

(Seal) C. W. CALBREATH,
Clerk.

Federal Security Agency
Bureau of Employees Compensation
13th Compensation District

Claim No. 2906

Case No. 181-1780

In the Matter of the claim for compensation under
the Longshoremen's and Harbor Workers' Com-
pensation Act.

HENRY MANEKE and MOLLIE MANEKE,
Parents of Adrian Maneke, deceased,
Claimants.

against

GENERAL ENGINEERING AND DRY DOCK
CORP.,

Employer.

INDUSTRIAL INDEMNITY EXCHANGE,
Insurance Carrier.

CERTIFICATION

This is to certify that I am the duly appointed,
qualified and acting Deputy Commissioner of the
Federal Security Agency, Bureau of Employees
Compensation under the Longshoremen's and Har-
bor Workers' Compensation Act for the Thirteenth

Compensation District, comprising the State of California and other portions of the United States;

That there has recently been pending before me as said Deputy Commissioner, claims for compensation under said Act of Henry Maneke and Mollie Maneke, Parents of Adrian Maneke, deceased, against General Engineering and Dry Dock Corp., employer, and Industrial Indemnity Exchange, insurance carrier, my file No. 181-1780.

That the attached are originals or true and correct copies of pleadings, transcript of testimony, exhibits, and decision in said file as listed below, being a copy of the entire claim file therein as far as relevant to a review of the above proceeding:

1. Claim for Compensation of Molly Maneke, US-263, copy.

2. Claim for Compensation of Henry Maneke, US-263, copy.

3. Answers of Insurance Company US-215s to Claims for Compensation of Molly Maneke and Henry Maneke.

4. Compensation Order of February 19, 1948, copy.

5. Transcript of Testimony with attached Exhibits "A" and "B" Claims for Compensation of Molly Maneke and Henry Maneke.

Given under my hand at San Francisco, California this 26th day of March, 1948.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner,
13th District.

EXHIBIT A

Form US-263

UNITED STATES EMPLOYEES'
COMPENSATION COMMISSION

Office of Deputy Commissioner Warren H. Pillsbury. Administering Longshoremen's and Harbor Workers' Compensation Act.

Claim for Compensation in Death Cases by
Dependents Other Than Widow and
Children of Deceased

(Each dependent or representative must file
individual claim)

I hereby make claim for compensation under section 9 of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, and in support of my claim make answer to the following questions, unless otherwise stated, relating to the time of the death of deceased:

1. My claim arises out of the death of Adrian Maneke at Alameda, California.

2. Who died on 26th day of June, 1947, as a result of injury sustained on 26th day of June, 1947, in the employ of General Engineering and Dry Dock Corporation of Alameda, California.

3. What was your relationship to deceased? Mother.

4. I was born on the 10th day of March, 1894.

5. Were you wholly or partially dependent upon the deceased for your support? Partially.

6. If partially dependent, to what degree? \$300.

7. What other sources of income do you have? Husband worked part time at stave mill and earned \$800.00 in 1946; unemployed at present.

8. I own joint property as follows: Real estate, assessed value \$5,000, from which I receive an income of (None) annually and on which there is an indebtedness of (none); notes, stocks, bonds or mortgages; money in bank (none) from which I received (none) annually. State other sources of income, if any. (State fully.)

9. Is deceased survived by any other dependents? Yes. If so, name them and state relationship of each to deceased: Henry Maneke, Lebanon, Mo., father; date of birth 2-26-1891.

10. Name and address of last physician or hospital Mark L. Emerson, M.D. per FCO, Oakland, Calif.

11. Name of undertaker: Grant D. Miller. Address: 2850 Telegraph Ave, Oakland. F. H. Gilbert, Dixon, Mo.

12. Amount of undertaker's bills, \$700. Amount paid, if any, \$541.

13. By whom paid Clarence Maneke, 201 South Olive, Rolla, Mo.

/s/ MOLLIE MANEKE,

/s/ HENRY MANEKE,

Lebanon, Mo.

AFFIDAVIT

State of Mo.,

County of Laclede—ss.

On this 19th day of July, A. D. 1947, personally appeared before me the above named Henry Man-

eke and made oath that the answers by him above named and subscribed are true.

(Seal) /s/ ARTHUR E. HALZOG,
 Notary Public,
 Lebanon, Mo.

Form US-215

ANSWER OF EMPLOYER OR INSURANCE
 CARRIER TO EMPLOYEE'S CLAIM FOR
 COMPENSATION

Molly Maneke, Claimant vs. General Engineering and Dry Dock Corporation, Employer. Industrial Indemnity Exchange, Insurance Carrier.

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is admitted that applicant sustained an injury on or about the date set forth in the application.

2. It is admitted that both the employer and employee were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury.

3. It is admitted admitted that the relationship of employer and employee existed at the time of the injury.

4. It is admitted that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is admitted that notice of injury was given employer as specified in application.

6. It is (admitted denied) that applicant was

permanently disabled to the extent stated in application.

7. It is (admitted denied) that applicant was temporarily disabled for the period stated in application.

8. It is admitted that the rate of wages was in excess of \$37.50 weekly.

9. Dependency is denied.

INDUSTRIAL INDEMNITY
EXCHANGE,
/s/ D. R. BROPHY.

EXHIBIT B

Form US-263

CLAIM FOR COMPENSATION IN DEATH
CASES BY DEPENDENTS OTHER THAN
WIDOW AND CHILDREN OF DECEASED

(Each dependent or representative must file
individual claim)

I hereby make claim for compensation under section 9 of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, and in support of my claim make answer to the following questions, unless otherwise stated, relating to the time of the death of deceased:

1. My claim arises out of the death of Adrian Maneke at Alameda, California.

2. Who died on 26th day of June, 1947, as a result of injury sustained on the 26th day of June, 1947, in the employ of General Engineering and Dry Dock Corporation of Alameda, California.

3. What was your relationship to deceased? Father.

4. I was born on the 26th day of February, 1891.

5. Were you wholly or partially dependent upon the deceased for your support? Partially.

6. If partially dependent, to what degree? \$300.

7. What other sources of income do you have? Last year worked part time at stave mill and earned \$800 at present physically unable to work.

8. I own joint property as follows: Real estate, assessed value \$5,000, from which I receive an income of (none) annually and on which there is an indebtedness of (none); notes, stocks, bonds or mortgages; money in bank \$500 from which I received (none) annually. State other sources of income, if any. (State fully.) Produce nets \$20.00 a month for 6 months each year.

9. Is deceased survived by any other dependents? Yes. If so, name them and state relationship of each to deceased:

Molly Maneke, Lebanon, Mo. Relationship mother; date of birth Nov. 10, 1894.

10. Name and address of last physician or hospital Mark L. Emerson, M.D. per FCO, Oakland, Calif.

11. Name of undertaker Grant D. Miller. 2850 Telegraph Ave., Oakland, Calif. F. H. Gilbert, Dixon, Mo.

12. Amount of undertaker's bills, \$700. Amount paid, if any, \$541.

13. By whom paid, Clarence Maneke 201 So.
Olive St., Rolla, Mo.

/s/ HENRY MANEKE,

/s/ MOLLY MANEKE,

Lebanon, Mo.

AFFIDAVIT

State of Mo.,

County of Laclede—ss.

On this 19th day of July, A. D. 1947, personally
appeared before me the above named Molly Ma-
neke and made oath that the answers by her above
named and subscribed are true.

(Seal) /s/ ARTHUR E. HARLZOG,

Notary Public,

Lebanon, Mo.

Form US-215

ANSWER OF EMPLOYER OR INSURANCE
CARRIER TO EMPLOYEE'S CLAIM FOR
COMPENSATION

Henry Maneke, Claimant vs. General Engineer-
ing and Dry Dock Corporation, Employer. Indus-
trial Indemnity Exchange, Insurance Carrier.

The employer or insurance carrier above named
for answer to the claim respectfully shows:

1. It is admitted that applicant sustained an
injury on or about the date set forth in the appli-
cation.

2. It is admitted that both the employer and
employee were subject to the Longshoremen's and

Harbor Workers' Compensation Act at the time of the alleged injury.

3. It is admitted that the relationship of employer and employee existed at the time of the injury.

4. It is admitted that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.

5. It is admitted that notice of injury was given employer as specified in application.

6. It is (admitted denied) that applicant was permanently disabled to the extent stated in application.

7. It is admitted that applicant was temporarily disabled for the period stated in application.

8. It is admitted that the rate of wages was in excess of \$37.50 weekly.

9. Dependency is denied.

INDUSTRIAL INDEMNITY
EXCHANGE,
/s/ D. R. BROPHY.

Federal Security Agency
Bureau of Employees Compensation
13th Compensation District
[Title of Cause.]

COMPENSATION ORDER—AWARD OF
DEATH BENEFIT

Case No. 181-1780

Claim No. 2906

Such investigation in respect to the above entitled claim having been made as is considered

necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT.

That on the 26th day of June, 1947, Adrian Maneke, son of the claimants above mentioned, was in the employ of the employer above named at Alameda, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Industrial Indemnity Exchange; that on said day the said employee while performing services for the employer as a painter and engaged in ship servicing operations on a completed vessel on navigable waters of the United States at said harbor, sustained personal injury occurring in the course of and arising out of his employment and resulting in his immediate death as follows: While on a painting float at the after end of the ship he was thrown by a sudden movement of a wheel into the water and was drowned; that the average weekly wages of the claimant herein at the time of his injury amounted to the sum of \$61.60; that claimants herein, Henry Maneke, born February 26th, 1891 and Mollie Maneke, born March 10th, 1894, are the father and mother of the said employee and were dependent upon him to a substantial extent for support at the time of his death, that they are entitled to a death benefit at the rate

of 25 per cent of the statutory average weekly wages of the employee, amounting to \$9.38 a week each beginning with June 26th, 1944 during their dependency or until the further order of the Deputy Commissioner.

Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD

That the employer, General Engineering and Dry Dock Corporation, and the insurance carrier, Industrial Indemnity Exchange, shall pay to claimant compensation as follows:

To claimant Henry Maneke the sum of \$9.38 a week payable in installments each two weeks or monthly at his election beginning with June 26th, 1947 until the further order of the Deputy Commissioner.

To claimant Mollie Maneke the sum of \$9.38 a week payable in installments each two weeks or monthly at her election beginning with June 26th, 1947 until the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 19th day of February, 1948.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

Federal Security Agency—Bureau of Employees'
Compensation Tenth Compensation District.

Hearing before Leonard C. Brown, Deputy Commissioner at U. S. Postoffice, Lebanon, Missouri, Tuesday, October 21, 1947, 3:00 p.m.

Case No. 181-1780

[Title of Cause.]

On this date, at 3:00 p.m., continued from 9:30 a.m., before Leonard C. Brown, Deputy Commissioner of the Tenth Compensation District, at U. S. Postoffice, Lebanon, Missouri, claimants appearing in person and by Mr. W. I. Mayfield, Attorney, of Lebanon, Missouri, and the Employer and Insurance Carrier represented by Mr. Paul J. Dillard, Attorney, Lebanon, Missouri, this matter comes on for hearing on petition of claimants, Henry Maneke and Mollie Maneke, for death benefits on account of the death of one Adrian Maneke at Alameda, California, on June 26th, 1947 as a result of drowning while employed as a painter by General Engineering and [1 *] Dry Dock Corporation on the steamship Jacob S. Mansfeld, which was then afloat in the navigable waters of the Oakland Estuary, said drowning and death arising out of and in the course of said employment. Both Employer and Employee were subject to the terms of the Longshoremen's and Harbor Workers' Compensation Act, and the Employer was insured against liability thereunder by the Industrial Indemnity Exchange. The wages of the employee were in excess of the maximum of \$37.50 per week.

That no compensation has been paid. The burial of the employee was paid for by the employee's brother, Clarence Maneke, in a sum in excess of \$200.00, and no part of this has been refunded by the employer or insurance carrier. This proceeding has been transferred from the Thirteenth Compensation District, where the accident occurred, to the Tenth Compensation District, with the approval of the above named Bureau, for action in accordance with Section 19-G of the Longshoremen's Act.

Deputy Commissioner Brown: Mr. Dillard, just what are the issues that are being raised in this matter?

Mr. Dillard: The issue is the dependency benefits that were given to Henry Maneke and Mollie Maneke during their lifetime by the deceased, and the present dependency of the said Henry Maneke and Mollie Maneke for benefits under the Longshoremen's and Harbor Workers' Compensation Act.

Deputy Commissioner Brown: Now, you will enter this claim of Henry Maneke as Exhibit "A" and the one of Mollie Maneke as Exhibit "B".

(Said exhibits are hereto attached and made a part of [2] this transcript.)

[Printer's Note]: Exhibits A and B are identical to Forms 263 set out in full at pages 20 and 23 of this printed Record.

HENRY MANEKE,

claimant herein, being first duly sworn by the Deputy Commissioner, testified as follows, to-wit:

(Testimony of Henry Maneke.)

Direct Examination

By Deputy Commissioner Brown:

Q. Will you state your name, please?

A. Henry Maneke.

Q. And your address?

A. Lebanon, Missouri.

Q. Do you have any local address?

A. No, Lebanon, Missouri, is all I have.

Q. You are on an R.F.D. A. R.F.D. 1.

Q. And what box number?

A. I haven't got no box number, just Route 1 is all it is.

Q. You are the father of Adrian Maneke?

A. Yes, sir.

Q. How long have you been living here near Lebanon? A. Oh, three year.

Q. Three years? A. Yes, sir.

Q. Where was Adrian living during that time—well, during the last year of his life, rather?

A. Well, he made his home at our place, but he worked at Kansas City, and then he went to California—worked at California.

Q. Now, he was drowned on the 26th of June, 1947? A. Yes, I think so; yes.

Q. Where was he at work in June of 1946?

A. Well, I suppose he was at Kansas City—1946? He was [3] at Kansas City—worked at Kansas City.

Q. He was there in 1946?

A. I don't know that he was there in June; he might have been at home. You see, he come

(Testimony of Henry Maneke.)

home and stayed a week or two, but he was working at Kansas City.

Q. Who was he at work for?

A. Well, he worked for the Ford Motor Company and they laid him off there, and then he worked for General Motors, and then he worked for some other place there where they made these here gears.

Q. Made what?

A. Where they made these Alemite gears, but he didn't work there very long, he just worked there until he got a General Motors job.

Q. When did he go to California?

A. Well, along about some time in January.

Q. In 1947? A. Of 1947, yes.

Q. How continuous work had he had from June to January—June of 1946 to January of 1947?

A. Well, he worked steady.

Q. How often did he come home?

A. Well, when he was at Kansas City he come home about every two weeks.

Q. How long would he stay?

A. Well, he would get in there about Friday night or maybe Saturday morning and go back Sunday night. That is, when he quit Kansas City he came home maybe a week or two before he went to California. [4]

Q. Do you know what wages he made with the Ford Motor Company?

A. Well, no, I don't know just exactly, but he got over a dollar an hour, I think, there at General Motors.

(Testimony of Henry Maneke.)

Q. And how many hours a week—I am not talking about General Motors, I said Ford?

A. Oh, about 40 hours a week, I think that is what he got; then he made a little overtime.

Q. He had to pay board and room up there at Kansas City?

A. He had to pay board and room up there.

Q. During the time that he was working in Kansas City did he make any contribution toward your household expenses?

A. Well, yes, he helped me fix my barn up, and he helped us with—we rebuilt a room there and helped fix this and the basement.

Q. Now, when was this done?

A. Well, this here room and this basement was all repaired at the time he was in California, and just got done just, oh, a few weeks before he got drowned, and the barn was fixed, was rebuilt in 1946, along about, the best I remember, maybe in July or August. You see, I didn't work steady on it, I had a carpenter hired.

Q. Well, what contribution did he make toward that improvement?

A. Toward the barn?

Q. Yes.

A. Well, he give me the money to fix it with.

Q. How much did it cost?

A. Well, the house, it cost to [5] repair it—

Q. We are talking about the barn?

A. Oh, the barn? Well, that cost right around \$265.00 or \$270.00.

Q. And he furnished all that money?

(Testimony of Henry Maneke.)

A. He furnished all the money besides what work I could do on it. I helped do part of the work on it. We just had one man hired.

Q. And he furnished the money to pay the man?

A. The man? Well, he furnished the money. Of course, he give it to me and I give it to the man.

Q. Did he also pay for the material or furnish the money for it? A. For the material?

Q. Yes. A. He give me the money.

Q. That was about \$265.00?

A. Well, the best I remember, between \$265.00 and \$275.00. I can't remember. He has given me there between \$265.00 and \$275.00.

Q. When was this improvement made?

A. You mean on the barn?

Q. On what part?

A. It was on my barn there where I live now.

Q. Do you own that place? A. Yes, sir.

Q. You bought it about 3 years ago?

A. Yes, sir.

Q. And is it paid for? A. Yes, sir. [6]

Q. What did it cost you?

A. Oh, between \$5,000.00 and \$6,000.00.

Q. Where did you get the money to guy it with?

A. Well, I had that money.

Q. Before you moved there? A. Yes, sir.

Q. Did you have funds in addition to that?

A. No, sir. I sold another place down there in Maries County.

Q. Well, how often did he come home while he

(Testimony of Henry Maneke.)

was—you say about every two weeks he would come home?

A. When he was in Kansas City, but when he went to California he never come home, that was too far—he worked.

Q. Did he send you this money from Kansas City or did he always bring it?

A. He always brought it when he come home on Saturday nights, he always give it to me then.

Q. Is there anyone outside of your family who knows that he furnished the money for these improvements?

A. Well, nobody but us three.

Q. Did the man who did the work with you know where the money came from?

A. No, he didn't know where the money came from.

Q. Did the man who furnished the materials know where the money came from?

A. No, I bought that from a farmer—well, he wasn't exactly a farmer, he had a farm too, but he works here in town, he had a machine shop here in town. I bought the oak lumber from him.

Q. Well, after he went to California how soon did he begin sending you money?

A. Well, you see, when he went out there he give me enough money here to do me a while.

Q. To do what?

A. Before he left he give me enough money here to last a while.

Q. How much did he give you?

(Testimony of Henry Maneke.)

A. Well, he give me enough to fix all these buildings up.

Q. How much money did he give you?

A. When he left here?

Q. Yes.

A. Oh, he give me \$40.00 or \$50.00 when he left here, but that didn't go with the buildings, that was besides the buildings.

Q. What was that for?

A. Well, to keep things going, what I needed around the house, and some little bills to pay around the house. You see, we didn't get the house finished, we was aiming to do some more work to it and he got drowned. And we also put a kitchen cabinet in the house, and a sink, and we was aiming to run water in the house.

Q. When was that done?

A. Well, the running water hasn't been done yet; he didn't get that finished.

Q. Well, what did you do in the house. I understand the house work was all done after he went to California?

A. Well, all but the kitchen cabinet, that was done before [8] he went to California; the kitchen cabinet was built in there before he went to California.

Q. Did you do any of the work on that?

A. Well, he done a little of the work, yes, but we ordered all the material from Sears-Roebuck & Company.

Q. Already cut to put together?

(Testimony of Henry Maneke.)

A. It was already cut and laid out, all we had to do was set it up and he helped us set it up, and helped us set up the sink, he helped set that up.

Q. That also came from Sears?

A. Yes, it all come from Sears-Roebuck & Company.

Q. But you haven't got it connected up?

A. No, that is all connected up but the running water. You see, he had a well, and I aimed to connect the running water.

Q. What did he do about the house after he went to California—anything?

A. Just built that there room and that basement.

Q. How much did they cost you?

A. With an open porch, we made a closed-in porch, put the windows in and the basement after he went to California.

Q. What did that cost you?

A. Oh, I don't know, between \$120.00 to \$165.00, somewhere along there.

Q. How soon after he went to California did he start sending you money?

A. Oh, I don't know; maybe a month or two.

Q. How did he send you the money?

A. Well, I think it was a postoffice money order.

Q. Was it always in postoffice money orders?

A. Well—when he lived in California?

Q. That is what I mean?

A. When he was in the army he sent some money back, that was postoffice money orders.

(Testimony of Henry Maneke.)

Q. When was he last in the army—when was he discharged?

A. Oh, that was in 1945, I think after Thanksgiving, he come home. You see, he got a 45-day furlough before he come home.

Q. Well, how often after he went to California did he send you money?

A. Well, he just sent once to me after he went to California. You see, he hadn't been out there very long.

Q. He had been there six months, I thought you said? A. He was.

Q. But he only sent you money once?

A. One time.

Q. And when was that?

A. Well, it was about a month or so after he went out there.

Q. What was the amount of it?

A. Fifty dollars, about \$50.00, something like that.

Q. That would be some time in February?

A. Well, I imagine it was February or March, somewheres along there.

Q. Where was he living at that time? [10]

A. Well, he was at that address there, what he gave.

Q. Oakland, California?

A. I think it was where he got drowned, or somewheres there. I forget that address.

Q. Now, this firm that he worked for was working on the Alameda side there. Did he live in Alameda at any time?

(Testimony of Henry Maneke.)

A. I couldn't tell you about where that firm was located.

Q. Well, I am telling you. I know. I am just asking you if he at any time lived in Alameda?

A. Well, I don't know about Alameda.

Q. All right. Now, those are the only remittances or payments or contributions that you can think of—\$275.00—

A. After he went to California?

Q. No, I am talking about the whole picture now. \$275.00 for the barn and \$165.00 on the house?

A. Yes, sir.

Q. And \$50.00 in cash after he went west?

A. Well, then he bought some more furniture for the house; he bought a sweeper, electric sweeper.

Q. When?

A. Well, let's see. I believe that was when he come home from California, I believe that was the winter of 1945 and 1946.

Q. Well, that is too remote. We can consider only the twelve months prior to his death?

A. Well, that was all he bought for the house then there.

Q. Am I right about that: There was \$275.00 for the barn? [11]

A. Yes, sir.

Q. One hundred and sixty-five dollars for the house?

A. House and basement.

Q. And \$50.00 in cash?

A. Well, then he would send money along when he worked at Kansas City, for support money, to buy what we needed.

(Testimony of Henry Maneke.)

Q. In addition to these contributions?

A. Yes, he done that, I don't know, ten or fifteen.

Q. You say he sent that. Did he send it by mail?

A. He brought it to us; mighty near every time he come home he give us money.

Q. In addition to this \$275.00 for the barn?

A. For the barn, and he give us money along for support, to buy stuff, whatever we needed.

Q. Well, what is your best recollection as to the amount of those additional contributions?

A. Oh, he would always give us ten or fifteen or twenty dollars.

Q. When he came home on these two-weeks visits?

A. When he come home, what we needed.

Q. Well, you say ten or fifteen or twenty; that is quite a variable figure. A. Well.

Q. What would it average?

A. Oh, it would average about \$40.00 or \$50.00 a month, I guess, about \$40.00 a month, I guess.

Q. And for that six months that would be \$240.00 additional? [12]

A. And one time I paid a \$25.00 doctor bill; he give me \$25.00 for that; I believe it was in 1946.

Q. What time in 1946?

A. I believe it was.

Q. What time in 1946?

A. I was working in the stave mill in 1946, I

(Testimony of Henry Maneke.)

believe he give me \$25.00 to pay the doctor bill; I paid that to Dr. Harrell.

Q. Was that in the winter of 1946?

A. It was after Christmas of 1946, I believe it was in the winter of 1946.

Q. Well, that is still indefinite. Was it in December of 1946 or in January of 1946?

A. About January or February.

Q. Of 1946. Well, that is too early; we can consider only the period from June of 1946 until his death.

A. Oh, that was before then, yes.

Deputy Commissioner Brown: Any questions, Mr. Dillard?

Examination by Mr. Dillard:

Q. How old are you, Mr. Maneke?

A. Fifty-six.

Q. What is the status of your health?

A. What?

Q. What is the status of your health?

A. Well, I had a nervous breakdown in 1944.

Q. You have been a farmer all of your life?

A. I have farmed practically all my life, yes.

Q. Was any of this \$5500.00 that you paid for this farm in Laclede County belonging to Adrian Maneke?

A. No, the farm didn't belong to him.

Q. And the purchase money that went in to buy the farm wasn't any of his either, is that right?

A. No, not particularly.

Q. What kind of livestock or what livestock do you have on that farm, Mr. Maneke?

(Testimony of Henry Maneke.)

A. Which—now?

Q. Yes. A. Do you mean at present?

Q. Yes.

A. I have got six Jersey cows.

Q. Do you have any chickens?

A. Oh, we have a few.

Q. What is your income from that farm, Mr. Maneke?

A. Well, by the time I pay the expenses there isn't anything; by the time I pay the feed for the chickens there isn't any income.

Q. What money do you receive from the sale of the produce?

A. Do you mean from the cream or the eggs?

Q. Yes.

A. Well, we sell cream, a can once a week.

Q. Do you recall seeing Mr. Conn Winfrey this morning at 9 o'clock? A. Do which?

Q. You saw Mr. Winfrey this morning at 9 o'clock, didn't you?

A. Winfrey? Who is he?

Q. Cashier of the First National Bank?

A. Yes, I saw him; yes.

Q. And he showed you your ledger sheet?

A. Well, yes, I believe I seen it, yes; I saw it, yes.

Q. Now, do you recall the amount of money that you had in [14] the bank? I am not asking you how much it was.

A. Do you mean right now?

Q. No, no. I mean, you saw from the ledger sheet that you had money in the bank?

(Testimony of Henry Maneke.)

A. Yes, sir.

Q. Do you recall whether any of that money in the bank was money that had been given to you by your son?

A. Well, no, not—that wasn't, no. What is in there now wasn't. Well, yes, hold on. The bonds in there is his'n, he had three bonds.

Q. Now, those bonds, however, were cashed after his death?

A. They was cashed—

Deputy Commissioner Brown: Just answer his question.

A. Yes, they was cashed after his death.

Mr. Dillard: Q. We are not interested in that.

A. But that was his money, what is in there.

Q. You have had money in the First National Bank ever since you have been living in Lebanon?

A. Well, I will say two year, I imagine.

Q. 1944, 1945 and 1946?

A. I don't know whether there was any in 1944, I don't remember now.

Q. I think if you looked at those ledgers you would have seen 1944 and 1945?

A. Well, there might be; I wouldn't say.

Q. Did you look for any stated income from your son each month?

A. What was in the bank—

Q. No, no. Did your son send you any definite amount each [15] month?

A. No, not any definite amount, he didn't.

Q. He, from time to time, just gave you some money, isn't that right?

A. Yes, just cash.

(Testimony of Henry Maneke.)

Q. Did you ever ask him for any money?

A. No, he always give it to me; he knowed what I needed.

Q. Did you ever write to him for any money?

A. No, he knowed what I needed.

Q. Did you expect him to contribute to your support?

A. Yes, sir.

Q. Then you did have some definite idea that he would send you so much each month, is that right?

A. Well, he give it to me.

Q. What?

A. He would give it to me, yes.

Q. Now, I believe you told the Commissioner that you deposited the boy's money from the army in the State Bank?

A. That was in the State Bank, yes.

Q. And of course that is prior to a year and that is not involved in this?

A. No, that was his money. I deposited it there, that was in his name. I don't think I ever had any in the State Bank.

Q. Do you have any letters from him after he was in California with reference to money that he might send to you from time to time?

A. No. Well, he had the \$11.00 check that he sent to me; they might have it at the bank now. It is at the bank now. I haven't never got it out. I guess the State Bank has got that [16] \$11.00 check yet.

Q. Did you write to him while he was in California and ask him for money?

(Testimony of Henry Maneke.)

A. No, I never did write and ask him for money.

Q. Did you have occasion to expect a part of his weekly check or his monthly check?

A. Yes, he told me he would fix it, he would give it to me.

Q. Were those voluntary payments on his part or were they requests from you to him?

A. Well, they were voluntary, and then I requested. You see, I had these two boys—I had these two boys, and this boy was married, and this place what I have got out here, this boy was helping me fix this place up and taking care of it, and at mine and her death he is to get the place, and he had that made up with this boy, he was to get the place after our death and them boys had it made up how they were going to divide that, and this boy, he was helping me fix up the place, was going to get the farm after the death of—

Q. Adrian knew he was going to get the farm?

A. He knew he was going to get the farm after our death.

Q. And the money that he was sending to you to put on the farm was really for his benefit?

A. It would be his'n after our death.

Q. But he was improving his own property?

A. Well, it wouldn't be his'n until after our death.

Q. Just answer the question. He knew that he was going to [17] get the property?

A. Yes, it will be his'n after our death.

(Testimony of Henry Maneke.)

Q. Now, the money that he sent you from time to time, what was the purpose of it—was it to improve the farm?

A. It was to improve the farm for us to live on. He sent it to improve the farm and then for us to live on, when we needed the money to live on, it was to help us, he was to take care of us. That is what he agreed to do—take care of us, seeing that we had what we needed, he was taking care of us.

Deputy Commissioner Brown: Q. You spoke about this boy being married. Do you mean Clarence?

A. That is Clarence. You see, I had a nervous breakdown in 1944, you can ask the doctors there at Dixon, Doctor Gates, he will tell you, and the boy seen after me ever since that. Of course, he was in the army, he couldn't do nothing while he was in the army.

Mr. Dillard: Q. Let me see if I have this straight now. You had a nervous breakdown, you bought this farm for over \$5,000 of your own money?

A. Well, I had a farm down here and I sold it.

Q. Well, I mean, it was your own money that you bought this farm with. And then you had an understanding with your two sons that upon your death and the death of your wife that they should get the farm?

A. The boy in California was to get the farm, he understood it, with this boy here, to take care of us—he had to take care [18] of us.

(Testimony of Henry Manēke.)

Q. All right. Now, I don't understand you. The agreement that you had with the boy in California was this: that to get the farm he was to take care of you and make improvements on the farm from time to time, is that right?

A. Yes, he was going to, but that was up to him.

Q. Well, I know.

A. Yes, he was to make improvements on the farm and give us what we needed to live on and he was to get the farm after our death.

Q. In other words, he was buying the farm subject—

Deputy Commissioner Brown: No, the farm was already bought.

Mr. Dillard: I know, but what I am getting at is this:

Q. He was buying the farm from the agreement that you had with him that he would take the farm upon your death and Mrs. Maneke's death, is that right?

A. And he was to get the farm after our death.

Q. By supporting you and Mrs. Maneke during your life?

A. He was to support us and take care of us, anything we needed to live on, or doctor bills or anything.

Q. He had to do that to get the farm?

A. Well, the farm would be his'n.

Q. Well, that is what I say: he had to do that to get the farm? A. Yes, that's right.

Q. That's right. That's all I have. [19]

(Testimony of Henry Maneke.)

Examination by Deputy Commissioner Brown:

Q. Was there any understanding about any contribution that he might make to his brother Clarence as a part of the estate?

A. Sure, he had that made up with Clarence, the part Clarence was to get.

Q. What part was that?

A. Well, I don't know what that was; they was to fix that up together. You see, Clarence was married and he had to take care of himself, and if there was any left they had that made up together, he had to take care of us and Clarence told him he would get the farm at his death; they had that made in between themselves, how they was going to fix that.

Q. That he would get the farm after your death?

A. Adrian would, yes. Clarence wouldn't get the farm because Adrian was going to take care of us.

Q. Well, was he going to pay Clarence anything for a share in the estate?

A. Well, I don't know. He would give him some; I don't guess he was getting very much.

Q. What is your birth date, Mr. Maneke?

A. You mean when I was born?

Q. Yes.

A. Twenty-sixth day of February.

Q. What year? A. 1891.

Q. Are you employed anywhere?

A. I did work at the stave mill.

Q. Are you employed anywhere?

(Testimony of Henry Maneke.)

A. No.

Q. When did you last work at the stave mill?

A. Oh, it was in nineteen—well, I worked a little bit this spring but not but just a few days, I didn't practically work any much unless it was 1946.

Q. What time in 1946 did you quit work there?

A. Oh, along about the end of the year.

Q. How steadily had you been working there up to that time?

A. I didn't work steady there, just now and then.

Q. Well, how often?

A. Oh, maybe two or three days a week, and then lay out a week or two. I didn't work steady.

Q. Over what period did you work that way?

A. All summer when I wasn't at home working and wasn't able to work.

Q. What did you make at that work?

A. Oh, about 60 cents an hour.

Q. How much did you make altogether from June, 1946?

A. I didn't figure that all up; I wouldn't know. I just worked there as an extra hand. You can ask the boss there at the stave mill.

Q. Well, in your claim there is a statement that you worked part time in the stave mill and earned \$800.00.

A. Well, I expect maybe I did work that much, about \$800.00 in a year.

Q. Well, from what source did you get this information that you made \$800.00? [21]

(Testimony of Henry Maneke.)

A. Well, I got it down on my book down here. I have got the checks, I put it down as I worked.

Q. Well, you have a record of it, then?

A. I have a record up at the house, yes. I can get it there at the house.

Q. Well, why haven't you worked any at the stave mill since December of 1946?

A. Well, they shut down and quit the stave mill. I wasn't able to work steady, and just got a light job there like stacking staves.

Q. Take your hand away, I can't hear you?

A. I got the light job there stacking staves, I didn't do no heavy work at the stave mill, I stacked staves mostly, or else I graded staves.

Deputy Commissioner Brown: Have you any questions you want to ask, Mr. Mayfield?

Mr. Mayfield: No.

Deputy Commissioner Brown: I think that will be all, then.

Witness excused.

CLARENCE MANEKE,

called as a witness, being first duly sworn by the Deputy Commissioner, testified as follows, to-wit:

Direct Examination

By Deputy Commissioner Brown:

Q. What is your name, please?

A. Clarence Maneke. [22]

Q. Your address?

A. 201 South Olive St., Rolla, Mo.

Q. You are attending the Missouri School of Mines there? A. That's right.

(Testimony of Clarence Maneke.)

Q. You are a brother to Adrian Maneke?

A. Yes, sir.

Q. How old are you? A. Twenty-nine.

Q. How long have you been married?

A. 1944, I was married in December, the 20th day of December.

Q. Do you have any children?

A. No, sir.

Q. What do you know about your brother Adrian furnishing your parents with moneys for any purpose?

A. Well, he went to work in Kansas City up till—well, he was in the army, he has had a family allowance or allotment from the government, which is stated, I don't know how much it was for his particular case at the time, but that is stated on his discharge, he had a dependency allotment too, and after he got out of the service, he was discharged January 4, 1945, I believe—1946, rather. I was December 3rd, he was a month after I was. Then he stayed around home, I guess, until in a couple of three months, I don't know for sure, and then he went to Kansas City and went to work for the Ford Motor Company, and he drew,—I don't know his wages, but anyway I do know that his checks ran approximately \$50.00 a week.

Q. Net, you mean?

A. Net. I think you can check with the Social Security Board and get the correct amount if necessary. [23]

(Testimony of Clarence Maneke.)

Q. Income tax contributions.

A. Income tax contributions. I wouldn't say for sure, but I know from experience that he wouldn't hardly work for a job unless he shot \$45.00 or \$50.00 clear on his checks. When he came home he usually made it in on Friday nights, unless holidays, he stayed longer, he gave the folks ranging, I would say it would average \$50.00 a month what time he was working up at Kansas City.

Q. Were you living at home at that time?

A. No, I was in Mexico, Missouri, which he would lots of times come by there and pick me up and bring he on down home.

Q. Well, did you actually see him give this money to your parents? A. Yes, sir, I did.

Q. To whom; to which one did he give the money?

A. He give it to mother mostly, practically all the time he give it to mother because he thought quite a bit of her, naturally.

Q. How often did you personally see him give them money?

A. Well, mostly generally every time I was home. You see, he was home a lot of times that I wasn't, but every time—my brother and I was—pretty close friendship with him, I mean, and he always told me what all he did, and I saw him every time I was home give her money. Of course, now, he was home,—I never made it home but about once a month.

Q. There was about half of his visits you came with him?

(Testimony of Clarence Maneke.)

A. Came with him; he would come and get me.

Q. Did you drive home?

A. He drove down. Picked me up, I didn't have a car at that [24] time, it was a little bit out of his way to make it every trip, to come down around by Mexico makes it 200 miles farther to drive, so he usually averaged about once a month.

Q. Did he give money to your parents every time that he came home?

A. Every time I came.

Q. Do you know the amounts of it?

A. It averaged ten a week, sometimes he would get a little short and maybe he wouldn't give her exactly \$10.00 this time and the next time it would be an average of \$50.00 a month. I know that is what he planned on giving her.

Q. What was that money given for?

A. For the folks to buy subsistence to live on; food, in other words, grocery bills.

Q. You have heard your father's testimony this afternoon?

A. Yes, sir.

Q. With reference to these contributions that were made for the improvement of the home out there. Were those contributions in addition to the \$50.00 a month that you have spoken of?

A. Yes, sir.

Q. Did you see him give any of that money?

A. I didn't see him give that money because he told me he was going to give them that money.

Q. Was it given in one lump sum?

A. Yes, sir, it was given,—he had a bank ac-

(Testimony of Clarence Maneke.)

count here in town and he always give them that money. [25]

Q. That is, your brother had a bank account?

A. My brother had a bank account in town.

Q. Did he draw the money out and give them the cash?

A. I heard him say he was going to give them the cash because at the end of the month he said he would generally save it up. I don't think what time he was up there, he could have easily give them cash because he told me he was intending to give them cash. I don't know, I couldn't swear exactly how he give it to them because I never saw him give it to them, but I do know that he was going to give to them and the bills got paid, so I guess he did.

Q. Did he state the amount he was giving to them?

A. No, he didn't. Said just what it took to fix it. The only thing I do know, that he bought it—my father was a little nervous and got mixed up on that sweeper business,—that was up last winter a little over a year ago we bought that at Montgomery Ward in Kansas City. I think, if he hasn't lost it, I knew there was a check given for it and that check might be in the bank. That check was \$50.00. That was given by check.

Q. That is, the check was made out to Montgomery & Ward?

A. To Montgomery & Ward. I saw that written.

Q. You spoke about his place of residence when

(Testimony of Clarence Maneke.)

he was in California. What have you got to say about that?

A. Now, when he was in California, the only good jobs he had that paid any money, what he didn't live off of, was this at Alameda, [26] and I don't know approximately how long he worked at that. Of course, that can be checked up from the company, they know that record.

Q. Well, they have reported it was about a month?

A. Well, I judge that was about right, because, now, he worked—well, he went out to California more or less, I think, to see the country or something, more of a vacation, he wasn't intending to stay long because I got a letter to that effect that he was intending to come back this fall and go to school, he didn't say definite, but he said he was planning on that, and he said that he had this good job.

Q. Well, you are still going a long way around to give me his address?

A. Well, his address. Well, he worked at Los Angeles for a while, but that address I don't know, then came up to Modesto, that is about a hundred miles——

Q. I know where Modesto is; go ahead.

A. And then his address was in Oakland, California, it was on 83rd Street, the exact number I don't know.

Q. Well, the employer gives it as 2040 83rd Avenue?

(Testimony of Clarence Maneke.)

A. That is correct, it was on 83rd Avenue.

Q. Well, this \$50.00 that you have heard your father testify to that he sent some time in February was probably sent from where?

A. That I couldn't tell. I imagine from down around Los Angeles some place because that was before they went up there. He [27] went to Oakland from down—I mean the latter part, I don't know what month he went up there.

Deputy Commissioner Brown: Any other questions, Mr. Mayfield?

Mr. Mayfield: No.

Deputy Commissioner Brown: Mr. Dillard?

Mr. Dillard: What is your procedure with reference to objections, Mr. Brown?

Deputy Commissioner Brown: Well, I listen to them and if I think they are good I will approve them and if not I will overrule them.

Mr. Dillard: I would like to enter a general objection to all of the statements that Clarence Maneke made with reference to conversations that he had with his brother as to the amount of money that he paid to his parents because that doesn't give us an opportunity to examine the deceased; we have no way of disproving or proving it. And, furthermore, conversations that Clarence had with his parents as to how much the deceased gave him, I think that his testimony should be limited to what he knows of his own knowledge that Adrian Maneke gave to Mr. and Mrs. Maneke.

Deputy Commissioner Brown: Well, there is a provision in the Longshoremen's Compensation Act

(Testimony of Clarence Maneke.)

that hearsay evidence may be received, but it cannot be used as a [28] basis for an award unless it is corroborated.

Mr. Dillard: Yes, sir. I was entering that objection just for record purposes.

Deputy Commissioner Brown: Well, I will convey your objection to the Deputy Commissioner in San Francisco, who will make the decision on the case, and he can weigh and segregate the evidence himself.

Examination by Mr. Dillard:

Q. Clarence, do you know of your own knowledge how much money Adrian sent his mother and father from California?

A. No, sir, I don't. I never saw that. He never exactly said, only that he was sending money, but what he sent I don't know.

Q. You heard your father testify that he had sent them one sum of \$50.00?

A. Yes, sir.

Q. And I believe your father testified that that was received in February?

A. Yes, sir.

Q. And you don't know of your own knowledge of any other moneys that was sent from California?

A. No, the only thing that he told me——

Q. No. Conversations, I am not interested in that. Just of your own knowledge, if you happened to be at home when you saw a letter come in and read the letter and money fell out of it or something like that?

A. No.

Q. You don't know?

A. No. I have a letter in my own possession stating that the folks, if they are in need of any-

(Testimony of Clarence Maneke.)

thing, [29] to let me know and I will come home immediately if they need me personally or if they need anything,—I took it to mean money at the time,—why write me and let me know.

Q. I believe you told the Commissioner that when Adrian went to California he went there primarily on a vacation, is that right?

A. Well, I just judged that myself, for his intention was staying out there temporarily. If he was going out there for a permanent job, why he would have took a lot—he left all of his winter clothes at home, he never took them.

Q. What was the impression that you had from your brother when he left Missouri to go to California with reference to getting work out there; did you think he was going to get a job and stay out there?

A. Just get a job to carry him along out there, and also he said, take his expenses, of course he was taking care of the folks all the time, that's all he had to take care of them, it wouldn't take too much money for him, that and his car, that is about all he had to keep up.

Q. That is all, I think, sir.

Witness Excused.

Mr. Dillard: Mr. Brown, I would like to ask Mr. Maneke one more question that I overlooked. The elder Mr. Maneke.

HENRY MANEKE,

claimant herein, recalled as a witness, having heretofore been first duly sworn, testified further as follows, to-wit: [30]

Examination by Mr. Dillard:

Q. You stated this morning, Mr. Maneke, before the Commissioner, Mr. Brown, and myself when we dismissed the bank records that the bank records did not reflect any payment that you received from your son?

A. Why, no, I don't think so, no.

Q. Well, I mean, that was your statement. Isn't that correct?

A. I think it was, yes. I think I told you that the money he sent me, I didn't have no checks where he sent me through the bank, no.

Q. That is what I say, that bank account as reflected from the ledger did not show any money that your son had sent you?

A. No, that's right. Only the State Bank, now, they have got an \$11.00 check over at the State Bank that he sent. It is there at the State Bank. Did you get it, Clarence? I think there was an \$11.00 check over there yet where he sent me \$11.00. That was along about January, some time in January.

Q. I believe you told the Commissioner and me this morning, however, that you did bank at the First National Bank, is that right?

A. That is where I drew my—

(Testimony of Henry Maneke.)

Q. And that Adrian had his account at the State Bank? A. At the State Bank.

Q. I see. That is all.

Q. (Deputy Commissioner Brown): Well, do you mean there is a cancelled check that is still over there? [31]

A. There is an \$11.00 cancelled check there at the Lebanon State Bank if the Administrator hasn't drawn it out.

Witness Excused.

CLARENCE MANEKE,

recalled as a witness, having heretofore been first duly sworn, testified further as follows, to-wit:

Examination by Mr. Dillard:

Q. Clarence, I believe you are the administrator of the estate of Adrian? A. That's right.

Q. Do you recall how many months Adrian worked prior to his death since his discharge from the army and within one year prior to his death?

A. Well, I couldn't tell you the months. I can tell you when he went to work. He went to work about—he got his discharge in January and he went to work, the first job he had was in March.

Q. March of what year?

A. Of 1946. He had—well, he worked at the railroad in Springfield for a little while, but he didn't like that and quit there.

Q. Well, I don't want to carry you through those jobs. Now, from March, 1946, until the time

(Testimony of Clarence Maneke.)

he left Missouri,—what month did he leave Missouri? A. He left in January.

Q. In January of 1947?

A. This year; 1947.

Q. I believe the record shows that he went to work for General Engineering & Dry Dock Corporation when?

Deputy Commissioner Brown: It doesn't say when, but the period of employment on the report of the insured is given as one [32] month.

Q. (Mr. Dillard): Do you know of your own knowledge how long he had been working for the General Engineering & Dry Dock Corporation?

A. Just approximately.

Q. What would you say?

A. I would say it was approximately a month, I don't know, I wouldn't swear to that because I just——

Q. And he was drowned on the 26th day of June and, accepting your figures, he went to work some time, we will say, in May, 1947, is that correct?

A. If he worked a month. Now, you would have to check with the company to find out for sure.

Q. He left Missouri, then, in January of 1947?

A. That's right.

Q. And he went to work in May of 1947 in California?

A. No, that is at that company, but he had other jobs, temporary jobs. He was around Los Angeles a while.

(Testimony of Clarence Maneke.)

Q. All right?

A. But what he made I don't know, I never did find out for sure. He made some pretty good money there.

Q. Now, for the period of his employment prior to his death do you know approximately how much he saved or how much he deposited in his own account at the State Bank?

A. He never deposited any.

Q. Did he have a bank account with the State Bank at the time of his death?

A. He had a bank account with the State [33] Bank here at the time.

Q. How much did he have in it?

A. Well, at the time of his death, now, that is, I couldn't say for sure, but I think it was approximately \$1700.00 in the bank up here.

Q. And did he own any property?

A. Nothing but an automobile.

Q. What kind of an automobile?

A. Mercury.

Q. Of what year?

A. '40 model,—1940 coach.

Q. When did he buy that?

A. He bought that, I don't know for sure, he bought that here in town from Montgomery. I couldn't—I don't know. He bought that in the summer some time.

Q. Summer of 1946?

A. That's right, somewheres along about May or June, I wouldn't say for sure.

(Testimony of Clarence Maneke.)

Q. Do you know how much he gave for it?

A. No, I don't.

Q. Do you know the value of automobiles?

A. I know the ceiling price of them at that time.

Q. What was the price on this Mercury, do you know?

A. I would judge that Mercury around \$850.00 at the time, but what he paid for it I couldn't tell you.

Q. I see. That is a good answer. That's all.

Q. (Deputy Commissioner Brown): Was the Mercury paid for? A. Yes.

Witness Excused. [34]

MOLLIE MANEKE,

claimant herein, called as a witness, being first duly sworn by the Deputy Commissioner, testified as follows, to-wit:

Direct Examination by Deputy Commissioner Brown:

Q. Will you state your name, please?

A. Mollie Maneke.

Q. And your address?

A. Lebanon, Missouri, Route one.

Q. You were the mother of Adrian Maneke?

A. Yes, sir.

Q. You have heard the testimony of your husband here and your son with reference to the contributions that Adrian made toward your support and the repair of your home out there. Can you

(Testimony of Mollie Maneke.)

give us any better idea as to the amounts of money that your son gave?

A. Well, I don't know, he would come home every two weeks and bring his laundry, he would bring it home for me every two weeks. Well, he would give me the check that he would have, he would say "Mama, here is the check."

Q. The what?

A. The check that he would have, that he would draw at Kansas City.

Q. Was that a pay check or a check on some bank up there?

A. No, that was his pay check, and he says "Mama, here's the check," says, "take it and get what you need out of it."

Q. What would those checks amount to?

A. Well, I just forget. You know, I have had so much, seemed [35] like, trouble here lately that I just can't remember anything hardly.

Q. Well, he had endorsed those checks hadn't he?
A. Yes.

Q. And you had to re-endorse them to get money, didn't you?

A. Yes. I would take them up to the bank and cash them and then I would keep out what money I would need.

Q. What did you do with the rest of it?

A. Well, I deposited it in his name over at the State Bank.

Q. Oh, I see. How much money did you keep out of those checks?

(Testimony of Mollie Maneke.)

A. Well, I would keep all the way from \$10.00 a week, every two weeks that he would——

Q. That would be \$20.00, then?

A. Twenty dollars every two weeks out of the checks that he would give me.

Q. Was it a regular deduction that you made?

A. As long as he worked up at Kansas City he would bring them down.

Q. Did he bring all of his checks?

A. Yes.

Q. How often was he paid?

A. Well, he was paid——

Q. Once a week or two weeks?

A. Well, he didn't come home but every two weeks.

Q. Well, how often was he paid?

A. Well, he was paid, I guess, every week.

Q. So it would be only every alternate pay check, then, that [36] he would bring home?

A. Well, every other one he would bring to me, and then he would give me \$20.00 for the two weeks; it would be \$10.00 a week is the way it would be; and I would cash them when he came home and put the rest of it in the bank.

Q. That was during the entire six months that he was up there at Kansas City?

A. Yes, in Kansas City.

Q. Do you know whether this money that was given for the improvement of the place out there or the fixing up of the barn was all given at one time or was it given as it was used?

(Testimony of Mollie Maneke.)

A. Well, he give it, part of it for the barn, mostly at one time, and then——

Q. Was that money in cash or in the form of a check? A. Well, it was cash.

Q. Did he draw it out of the State Bank here or did he have it saved elsewhere?

A. Well, he had it up here at the bank; it was deposited here in the bank, but he would come out with his checks and then he would save it and bring it and give it to us when we needed it.

Q. I don't think we quite understand each other yet. Did he draw this \$275.00 out of the bank to use for this barn improvement?

A. No, he give it as—well, I don't know, he give it as he had it, you know.

Q. He just brought it to the house in cash?

A. Yes, in cash, and give it to us. [37]

Q. Did he give it to you or to his father?

A. Well, he give it to his father.

Q. Do you know the amount of it?

A. Well, not exactly, because he would give it to him for the barn, and then the other checks he would always give them to me.

Q. Did you see the money that he gave to his father?

A. Well, I seen the money but I never counted it. He just says "Adrian, give me so much money to help on the place."

Q. Do you know anything about the amount of money that was spent on the improvement of the house?

(Testimony of Mollie Maneke.)

A. Well, I don't know just exactly how much, but I know what he did.

Q. What was that?

A. We got those cabinets, the cabinets we ordered,—there weren't no cabinets in the house when we got there, and no sink or anything. You see, he helped, and he helped me put them in, he got them for me, and they cost right around—well, let's see,—about a hundred dollars is what it cost, the cabinets and sink and fixing it in there, and he intended to put the water—running water in the house, he was going to put the bath and stool and everything all there at the porch where we built this one room and fixed and he hadn't never saw this one room, we had it all fixed, I wrote to him and told him we hadn't ever got it all fixed. Well, he says "Mama, when I come home I will fix it for you."

Q. This cabinet and sink, you say, cost about \$100.00? [38]

A. Yes, that is about what it cost.

Q. Was there some additional expense for the other items? A. You mean——?

Q. For the stool, wash bowl and so on?

A. Well, we haven't got that in. We didn't even do that since this happened.

Q. Oh, I thought you said that was there but hadn't yet been attached?

A. No, that is not the way I said it. I said he was supposed to put it in for me. You see, he was going to do all of this.

(Testimony of Mollie Maneke.)

Q. But you did build a room on the porch for it?

A. Yes, we weatherboarded it all up and fixed it there. Of course, I have got a bath tub there, but the rest of it isn't there, and he was intending to do it all there for me.

Q. Well, what is your best judgment as to the entire amount that your son gave or sent to you during that 12 months before his death?

A. I just couldn't hardly say. He would just bring it in and says "Mama, here's some money, if you need it just use it" and I would just take it and use it.

Q. Did he give you any authority to draw checks on his bank? A. Yes, he did.

Q. Did you draw any checks?

A. No, we hadn't, because I just thought, well, he was young and what he put in the bank I would just leave it and just let him give us what he wanted to, so we didn't draw none, but he says, [39] "Mama, if you need it." Now, I bought me a refrigerator last fall, we got it last winter, and he wanted to get that for me all last summer and he says "Mama, if you need the money, just write a check on my account." So my son over here got it for me and we didn't write no checks.

Q. What did that cost?

A. Two hundred and thirty some odd dollars, I think that is what it was.

Q. (Mr. Dillard): Now, you mean that Clarence bought it for you?

(Testimony of Mollie Maneke.)

A. Well, he got it, but the way it was, I paid him out of the other money, you see.

Q. Oh, I see.

A. Clarence got it first for me but I paid Clarence afterwards, you see, out of the money that he told me to use of his money.

Q. (Deputy Commissioner Brown): What was the date of your birth?

A. Well, it is—well, I am just three years younger than him and I forget. The 10th of March.

Q. Well, he said he was born in 1891; that would make you '94, then?

A. Yes, that is what it is, would be '94.

Examination by Mr. Dillard:

Q. Mrs. Maneke, did Adrian know that he was to get this farm after you and Mr. Maneke passed on?

A. Yes, we told him if he would take care of us why—

Q. He would get your farm?

A. —he would have it. [40]

Q. Approximately what is your income each week from the sale of cream or—

A. Well, I'll tell you. You know, feed is awful high. When we take anything to sell we have to put it right back in feed, and we don't get any income. When we take our stuff up here in town and buy our groceries we don't have anything left.

Q. But ordinarily you do get feed and groceries out of the—

A. Sure, we buy our feed and groceries and things like that.

(Testimony of Mollie Maneke.)

Q. Other than that there is nothing left?

A. No, there is nothing left.

Mr. Dillard: If the Court please, on the record, I want to object to the statement that Mrs. Maneke made with reference to the intention of the deceased, Adrian, and to all statements that she made with reference to payment of money that she doesn't know of her own knowledge and based upon hearsay from statements of her husband.

Deputy Commissioner Brown: I don't recall any such statements.

Mr. Dillard: Yes, sir, she said that what Mr. Maneke had told her several times, that he had given her money, that he intended to do additional things.

Deputy Commissioner Brown: Oh, well, that is not a contribution.

Mr. Dillard: I believe that is all I have.

Witness Excused. [41]

CLARENCE MANEKE,

recalled as a witness, having heretofore been first duly sworn, testified further as follows, to-wit:

Examination by Deputy Commissioner Brown:

Q. You have heard your father's testimony here with reference to the arrangements that he had with your brother, Adrian, about this farm, and that you had something fixed up between the two of you as to what you were to get, if anything, out of the farm. Could you tell us anything about that?

A. Well, the only thing I could say about that,

(Testimony of Clarence Maneke.)

of course the farm isn't worth a great deal and the folks have got to live quite a while, I hope, and I says "Adrian," I says, "I am married, I have got a family to look after," says, "If you will take care of the folks, why" I says, "as far as I am concerned, anything that is left in the estate, what is in it is yours." He says, "Well, I don't care nothing about that," says "I will contribute the money to the folks and you stay there and take care of them any other way you can help them out while I am out working," he says, "You will probably be around home more often than I am, if there is any sickness. As far as the farm is concerned or anything like that, when that time comes we will take care of that, we will——"

Q. You had no definite arrangements?

A. Well, that is what Daddy said he would do for us and as far as I was concerned, and Adrian, he was a good-hearted kid and he just didn't want to kinda hear of having it that way. When the time comes we will settle that. Now, that is what he told me, he [42] says "We will worry about that when the time comes."

Witness Excused.

Deputy Commissioner Brown: Is that all?

Mr. Dillard: That is all.

Deputy Commissioner Brown: All right, case submitted.

(And this was all of the evidence offered and received on the hearing of the above entitled matter.)

REPORTER'S CERTIFICATE

State of Missouri,
County of Laclede—ss.

I, Arthur L. Funk, do hereby certify that I am now and have been since January, 1935, the duly appointed, qualified and acting Official Court Reporter of the Nineteenth Judicial Circuit of Missouri; that I was in attendance and reported in shorthand the proceedings had on the hearing held in the above entitled matter at Lebanon, Mo., on Tuesday, the 21st day of October, 1947; and that this page and the foregoing forty-two (42) pages contain a full, true and complete transcript of my shorthand notes of said proceedings, as reported by me at that time.

Done at my office in Lebanon, Missouri, this 25th day of October, 1947.

/s/ ARTHUR L. FUNK,
Official Court Reporter, Nineteenth Judicial Circuit, State of Missouri.

[Endorsed]: Filed March 24, 1948. [43]

[Endorsed]: No. 12115. United States Court of Appeals for the Ninth Circuit. Industrial Indemnity Exchange and General Engineering and Drydock Corporation, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency and Henry Maneke and Mollie Maneke, Parents of Adrian Maneke, Deceased, Appellee. Transcript of Record, Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 6, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

At a Stated Term, to-wit: The October Term, 1948, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the sixth day of December, in the year of our Lord one thousand nine hundred and forty-eight.

Present: Honorable Albert Lee Stephens, Circuit Judge, Presiding, Honorable William Healy, Circuit Judge, Honorable Homer T. Bone, Circuit Judge.

[Title of Cause]

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT AND
DOCKET CAUSE

Upon consideration of the motion of appellants for an extension of time to file the transcript of record and docket above cause in this court, and stipulation of counsel thereto, and oral presentation thereof by Mr. Donald R. Brophy, counsel for appellants, and good cause therefor appearing, it is ordered that said motion be, and hereby is granted, and that the time of appellants to file the transcript of record herein, and docket above cause in this court be, and hereby is extended to and including this date.

In the United States Court of Appeals
for the Ninth Circuit

No. 12115

INDUSTRIAL INDEMNITY EXCHANGE and
GENERAL ENGINEERING AND DRY-
DOCK CORPORATION,

Appellants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner for the 13th Compensation District of the
Bureau of Employees' Compensation, Federal
Security Agency, et al.

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL AND DESIGNATION OF PARTS OF
RECORD NECESSARY FOR THE CONSID-
ERATION THEREOF.

Appellants intend to rely on the following points
on appeal:

(1) That the District Court erred in granting
the motion to dismiss the complaint for an injunc-
tion against the enforcement of the Compensation
Order—Award of Death Benefit entered by the ap-
pellee Pillsbury because said Compensation Order-
Award of Death Benefit was not in accordance with
law in that there was no substantial evidence in
the proceedings before appellee Pillsbury to sup-
port the finding that the claimants in said proceed-
ings were dependent upon the deceased employee

to a substantial extent for support at the time of his death.

(2) That the District Court also erred in granting the motion to dismiss because said Compensation Order-Award of Death Benefit was not in accordance with law in that under the Longshoremen's and Harbor Workers' Compensation Act benefits are payable to partial dependents only "during such dependency" and the evidence in the proceedings before appellee Pillsbury established that if any dependency existed at the time of death it had terminated prior to the entry of said Order.

Appellants request that the record as certified to the Clerk of the United States Court of Appeals for the Ninth Circuit, be printed in its entirety.

Dated: December 20, 1948.

/s/ LEONARD, HANNA & BROPHY,
/s/ DONALD R. BROPHY, IVAN A. SCHWAB,
Attorneys for Appellants.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed December 20, 1948. Paul P. O'Brien, Clerk.